

§ 201.6

(h) Submitting a FOIA request shall be considered a commitment by the requestor to pay applicable fees required under § 201.8 unless the requestor seeks a waiver of fees. When making a request, you may specify a willingness to pay fees up to a specific amount.

(i) The FOIA does not require the Board to:

(1) Compile or create records solely for the purpose of satisfying a request for records.

(2) Provide records not yet in existence, even if such records may be expected to come into existence at some time in the future.

(3) Restore records destroyed or otherwise disposed of, except that the FOIA Officer must notify the requestor that the records have been destroyed or otherwise disposed of.

§ 201.6 Responsibility, form, and content of responses.

The Board's Executive Director or his/her designated FOIA Officer is authorized to grant or deny any request for a record and determine appropriate fees. When determining which records are responsive to a request, the Board will include only records in its possession as of the date of the request.

(a) If no records are responsive to the request, the FOIA Officer will notify the requestor in writing.

(b) When the FOIA Officer denies a request in whole or in part, he/she will notify the requestor in writing. The response will be signed by the FOIA Officer and will include:

(1) The name and title or position of the person making the denial;

(2) A brief statement of the reasons for the denial, including the FOIA exemption(s) that the FOIA Officer has relied on in denying the request; and

(3) A statement that the denial may be appealed under § 201.14 and a description of the requirements of that section.

(c) *Referrals.* When a request for a record not created by the Board is received, the Board shall refer the requestor to the issuing agency in writing, providing the address of the agency contact and the section(s) referred.

(d) *Timing of responses to requests sent to other agencies.* The Board shall provide, within the FOIA deadline, re-

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sponses only to those parts of the request not referred.

(e) *Agreements on referrals.* The Board may make agreements with other agencies to eliminate the need for referrals for particular types of records.

§ 201.7 Timing of responses to requests.

(a) *General.* The Board shall normally respond to requests in the order of their receipt.

(b) *Acknowledgement of requests.* On receipt of a request, the Board shall send an acknowledgement letter or an e-mail confirming the requestor's agreement to pay fees under § 201.8 and providing a request number for future reference.

(c) *Time limits for responding to FOIA requests.* The Board shall make an initial determination to grant or deny a request for records within 20 days (excluding Saturday, Sunday and holidays) after the date of receipt of the request, as described in § 201.5(d), except as stated in paragraph (f) of this section. Once the Board determines whether it can grant a request entirely or in part, it shall notify the requestor in writing. The Board shall advise the requestor of any fees to be charged under § 201.8 and shall disclose records promptly on payment of the fees. Records disclosed in part shall be marked or annotated to show the amount of information deleted unless doing so would harm an interest protected by an applicable exemption. The location of the information deleted also shall be indicated on the record when technically feasible.

(d) *Unusual circumstances.* (1) If the statutory time limits for processing a request cannot be met because of "unusual circumstances" as defined in the FOIA (5 U.S.C. 552(6)(B)(iii)), the Board shall promptly notify the requestor in writing, explaining the circumstances and giving the date by which the request can be completed or if the Board cannot complete the request. If the extension is for more than 10 working days, the Board shall provide the requestor with an opportunity to:

(i) Modify the request so that it can be processed within the time limit; or

(ii) Arrange an alternative time period for processing the original request.

(2) If the Board believes that multiple requests submitted by a requestor or by requestors acting in concert constitute a single request that would otherwise involve unusual circumstances, and if the requests involve clearly related matters, they may be aggregated. Multiple requests involving unrelated matters will not be aggregated.

(e) *Expedited processing.* (1) Requests and appeals shall be taken out of order and given expedited processing whenever it is determined that they involve:

(i) Circumstances that could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(ii) An urgency to inform the public about an actual or alleged activity if made by a person primarily engaged in disseminating information.

(2) Requests for expedited processing may be made either at the time of the initial request or at a later time.

(3) Requests for expedited processing must include a statement explaining in detail the basis for requesting expedited processing. For example, a requestor under §201.8 must establish that his/her professional activity is news reporting, although it need not be his/her sole occupation. The requestor also must establish a particular urgency to inform the public about government activity involved in the request, beyond the public's right to know about government activity generally.

(4) Within 10 calendar days of receipt of a request for expedited processing, the Board shall decide whether to grant the request and notify the requestor of its decision. If a request for expedited treatment is granted, the request shall be processed as soon as practicable. If a request for expedited processing is denied, an appeal of that decision shall be acted on expeditiously.

(f) *Tolling of time limits.* (1) The Board may toll the 20-day time period to:

(i) Make one request for additional information from the requester; or

(ii) Clarify the applicability or amount of any fees, if necessary, with the requester.

(2) The tolling period ends upon the Board's receipt of information from the requester or resolution of the fee issue.

§ 201.8 Fees.

(a) *General.* The Board shall charge for processing requests under the FOIA in accordance with paragraph (c) of this section, except where fees are limited under §201.9 or where a waiver or reduction of fees is granted under §201.11. Fees must be paid before the copies of records are sent. Fees may be paid by check or money order payable to the Treasury of the United States.

(b) *Definitions for this section.* (1) *Commercial use request*—A request from, or on behalf of, a person who seeks information for a purpose that furthers his/her commercial, trade, or profit interests including furthering those interests through litigation. The Board shall try to determine the use to which a record will be put. When the Board believes that a request is for commercial use either because of the nature of the request or because the Board has cause to doubt the stated use, the Board shall ask the requestor for clarification.

(2) *Direct costs*—Expenses that the Board incurs in searching for, duplicating, and reviewing records in response to a request. Direct costs include the full salary of the employee performing the work and the cost of duplication of the records. Overhead expenses, such as the cost of space, heating, and lighting, are not included.

(3) *Duplication*—Making a copy of a record or the information in the record, to respond to a request. Copies can be in paper, electronic, or other format. The Board shall honor a requestor's preference for format if the record is readily reproducible in that format at a reasonable cost.

(4) *Educational institution*—A public or private undergraduate, graduate, professional or vocational school that has a program of scholarly research. For a request to be in this category, a requestor must show that the request is authorized by and made under the auspices of the qualifying institution and that the records will be used for scholarly research.

(5) *Noncommercial scientific institution*—An institution that is not operated on a commercial basis, as defined in paragraph (b)(1) of this section and is operated solely for conducting scientific research that does not promote